SUPT. U.S.
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No. OFFICE OF THE CLERK

In The

Supreme Court of the United States

In re DAVID NEARHOOD,

Petitioner.

On Motion For Writ Of Mandamus Or In The Alternative Writ Of Prohibition To The United States District Court For The Western District Of Pennsylvania And Writ Of Remand

EMERGENCY MOTION FOR WRIT OF MANDAMUS OR IN THE ALTERNATIVE WRIT OF PROHIBITION

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41 pp

TABLE OF CONTENTS

	Page
QUESTIONS FOR WRIT OF MANDAMUS	1
QUESTION FOR WRIT OF PROHIBITION	1
QUESTION FOR WRIT OF ASSISTANCE	2
QUESTION FOR WRIT OF COURSE	2
QUESTION FOR WRIT OF ADVANCE	2
QUESTION FOR WRIT OF REMAND	2
PARTIES INVOLVED	3
PARTIES INVOLVED	4
BRIEF	4
STATEMENT OF CASE	5
WRIT OF MANDAMUS	6
WRIT OF PROHIBITION	11
WRIT OF ASSISTANCE	13
WRIT OF ADVANCE	14
WRIT OF REMAND	15

QUESTIONS FOR WRIT OF MANDAMUS

1. Does a U.S. District Court judge have the right to correct errors on orders that are presented to him for signature?

2. To what extent does a judges authority reach above the rules of law?

3. Which has the greater authority (A.) A commonwealth state that grants authority to the federal government by permission, but retains its own authority as stated in its own constitution and the definition of the title Commonwealth? (B.) or a federal judge in his motion to overthrow the Commonwealth bringing it to its end?

4. Is a plaintiff the master of his case?

5. Does a judge have the right to disregard his own local court rules?

6. Is it clearly an act of impartiality to make a judgment that is totally opposite of what the rules of law allow?

QUESTION FOR WRIT OF PROHIBITION

1. Is there any reason why a federal court that has given applied consent to an agreement then never continued their part in the advancement of the agreement should be allowed to continue in its final duty?

2. Do I as a party to this agreement have a right to order this court to declare itself a defacto Court and prohibit it from making a final judgment?

QUESTION FOR WRIT OF ASSISTANCE

Does this writ have the power to enforce the federal courts applied consent to move the property of Pennsylvania out of the authority of the Commonwealth and in to the authority of the federal U.S.? Dissolving the Pennsylvania Constitution and its title Commonwealth?

QUESTION FOR WRIT OF COURSE

1. Does this writ have the power to stay the course that has been granted by the applied consent of the U.S. District Court?

2. Does a plaintiff have the right to relinquish the right to be master of his case that the courts would not honor and continue the course to bring the state court to its final end, dissolving it as an authoritative entity?

1. (Answer) *Voluntas reputatur pro facto*. The will is to be taken for the deed.

QUESTION FOR WRIT OF ADVANCE

Does the Plaintiffs in the case before the U.S. District Court have the right to order the court to move forward on its agreement as applied to restore the honor to its Court?

QUESTION FOR WRIT OF REMAND

1. Is it possible to remove part of the case from state to federal court by not stating some of the claims?

2. In removing a case is it necessary to state the claims that are to be removed?

3. Are negligence, redress of grievance, color of law, claims which can be removed under 28 U.S.C. § 1441(a)(b)?

4. Should there be papers docketed in the court in which the case is removed to and similarly entitled?

5. If all parties agree that the subject matter jurisdiction is in the state court and the U.S. District Court lacks jurisdiction should it be remanded to the state court?

PARTIES INVOLVED

All parties do not appear on the caption of the cases on the cover pages. A list of all parties in the proceedings whose actions have caused these petitions to be filed with this Court are as follows:

For *Writ of Mandamus* – Judge D. Brooks Smith, David Nearhood, Joshua Nearhood. *Writ of Assistance* – United States District Court for the Western District of Pennsylvania, The Pennsylvania Constitution, The Commonwealth of Pennsylvania, David Nearhood, Joshua Nearhood. *Writ of Course* – United States District Court for Western District of Pennsylvania, The Commonwealth of Pennsylvania, The Court of Common Pleas in Pennsylvania, The Pennsylvania Constitution, David Nearhood, Joshua Nearhood. *Writ of Advance* – United States District Court for the Western District of Pennsylvania, The

Commonwealth of Pennsylvania, The Pennsylvania Constitution, The Court of Common Pleas in Pennsylvania, David Nearhood, Joshua Nearhood.[1] [2]

PARTIES INVOLVED

United States District Court for the Western District of Pennsylvania, Court of Common Pleas in Clearfield County, Plaintiffs – David Nearhood, Joshua Nearhood, Defendants – Officer Todd Lombardo, Morris-Cooper Police department, Trooper Thomas Granville, Pennsylvania State Police.

BRIEF

In Pursuit to Rule 21.4 this motion is in need of emergency action. The relief sought is to maintain the Pennsylvania Constitution and the State of Pennsylvania as a Commonwealth. Also the authority of the Pennsylvania's Courts of Common Pleas as defined in the Pennsylvania Constitution.

In Pursuit to Rule 37.3 we the Plaintiffs in this case are a party to this case and support this motion amicus

[1] Joshua Nearhood is a 5 yr. old child. I am his father acting a Pro Per for myself and my son.

[2] The other parties which are in directly involved through related lawsuits are the following: Trooper Thomas Granville and Pennsylvania State Police of the Woodland barrack and Officer Todd Lombardo and Morris-Cooper Police which is a township department in Pennsylvania.

curiae.[3] This motion is filed on our behalf as well as on behalf of The Court of Common Pleas and The Commonwealth of Pennsylvania. This case has not come to a final judgement yet. I believe it is of such public importance that this Court should not wait. This case if allow to continue on its course will cost the Commonwealth of Pennsylvania billions of dollars and mass confusion. We, the Plaintiff, will exercise our rights to file the writs that apply so that our case is concluded in true justice to its fulness. This Western District Court of Pennsylvania has given its applied consent to change the title and the course of the Commonwealth of Pennsylvania and its Courts. If our case is allowed to continue in this District Court, we, the Plaintiffs, will bind this as a course for all that follow establishing these actions as truths. And filing with the Court the Writs of Assistance, Course, and Advance, so none will again be deceived by the definition of the titles or the constitution of Pennsylvania. Please review civil case No. 01-339-J in the U.S. District Court of the Western District of Pennsylvania. Take special notice of those filed by the Plaintiffs.

STATEMENT OF THE CASE

Rule 20.3(a) Writ of Mandamus against D. Brook Smith, Chief Judge of the Western District of Pennsylvania. No other Court is authorized to exercise this Writ.

[3] This will support the Plaintiff party in its outcome and The Courts of Common Pleas and The Commonwealth of Pennsylvania.

The documents essential to understanding this motion are entitled: Notice of Dishonor and Restoration of Honor.

This request for a Writ of Mandamus is to dismiss and disqualify Judge D. Brook Smith from this case #01-339-J which is before him in the United States District Court of the Western District of Pennsylvania.

WRIT OF MANDAMUS

In pursuit to *171 ALR v. Mandamus 928*

A person aggrieved by the violation of a civil rights statute may maintain mandamus to enforce his rights, not withstanding the statute does not expressly so provide, at least where no other adequate remedy is available to him.

Arkansas – Maddox v Neal (1885) 45 Ark 121, 55 Am Rep 540.

California – Stone v Pasadena (1941) 47 Cal App 2d 749, 118 P2d 866.

Illinois – People ex rel. Peair v Board of Education (1889) 127 Ill 613, 21 NE 187;

People ex rel. Bibb v Alton (1904) 209 Ill 461, 70 NE 640.

1. On January 10, 2002 I filed a motion with the U.S. District Court for the Western District of Pennsylvania. Titled *RESTORATION OF HONOR TO THIS COURT.*

2. In that motion I ask JUDGE D. BROOKS SMITH by what authority did he make change to the order that Paul Krepps of the law firm MARSHALL, DENNEHEY, WARNER, COLEMAN, AND GOGGIN, filed for signing in which was designed in error.

3. Attached was certification stating the information is true and correct which it is not.

4. This I believe was in a violation of the criminal codes:

18 § 5101. Obstructing administration of law or other governmental function.

18 § 4904 Unsworn falsification to authorities.

18 § 4902 Perjury.

18 § 4902 Materiality.

18 § 4907.7. Falsity, elements of offense.

The oath must be false.

§ 13.25.1 Combining Accused

13.25.2

Advisable to change with conspiracy to commit the crime. Act of March 10, 1905, P.L. 35, §§ 1&2, 19 PS §§ 1293 & 1294.

§ 903 Criminal Conspiracy

§ 5301 Official Oppression

Crimen Falsi – See Fed. R. Evid. 609(a)(2).

5. I believe this action on Judge Smith's part puts him in bad behavior before the courts. And I ask that he be disqualified from the Civil case No. 01-339-J that is before him.

6. And that disciplinary measures be taken for 46 Am Jur 2d § 20. Violation of Procedural rules. Also I believe is related in the case Sache v Gillette, 101 Minn

169, 112 NW 386. In that the act of making the change and not sending me a copy that *is not* exact as file for signature has been done in an improper manner. This action could render his judgement void.

7. Also as in the Code of Judicial Conduct, Canon 2.A. A JUDGE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL HIS ACTIVITIES.

I have lost confidence in the integrity and the impartiality of the judiciary.

8. Also Canon 3.A. (1) A JUDGE SHOULD PERFORM THE DUTIES OF HIS OFFICE IMPARTIALLY AND DILIGENTLY.

I do not believe he is faithful to the rules of the law and I lost confidence in his professionalism.

9. Also Judge Smith's terminating the one party (Pennsylvania State Police) from the case does not hold true to the local court rule cited as W.D.PA. LR 17.1 § A. *No action* to which a minor is a party shall be compromised, settled, discontinued or *dismissed except* after approval by the court *pursuant to a petition presented by the guardian of the minor or natural guardian of the minor,* such as circumstances might require. I nor Joshua's mother filed a petition with any court asking to dismiss any party.

10. Vol. 10 W&P pg. 439 (West Publishing Co.) *Supreme Court*

Supreme Court is "Court of Record" within section of Uniform Declaratory Judgements Act providing that courts of record within their respective jurisdictions shall have the power to declare rights, status and other legal

relations. State ex rel. Schultz-Lindsay Const. Co. v. State Bd. Of Equalization, 403 P.2d 635, 647, 145 Mont. 380.

11. Vol. 10 W&P pg. 439 (West Publishing Co.) *Courts of Record of State*

Federal courts, although courts of record within state, are not, "courts of record of state." State v. Pierce, 209 N. W. 693, 695, 191 Wis. 1.

This U.S. Western District Court of PA has recorded statements of conclusion of the state police, terminating them as a party to this case.

12. Also the U.S. Western District Court of PA took it upon themselves to exclude Pennsylvania as a commonwealth by applied consent to W.D. LR 7.2 stipulation. See Restoration Of Honor To This Court filed January 10, 2002 in the U.S. District Court of the Western District of Pennsylvania. No. 01-339-J.

13. This District Court had two options to either send it back to the Common Pleas Court or to move forward and change the commonwealth to bring it to not. They chose the latter.

14. Please order the exercise of the rules of law in regards to the prejudices against, us, the plaintiffs.

15. And in pursuit of MANDAMUS AS REMEDY TO COMPEL DISQUALIFICATION OF FEDERAL JUDGE, 56 ARL Fed 494.

16. There are many rules of law cited by myself that at this point in time have been disregarded without a response.

17. Please review this case in its entirety and take all the actions that are applicable by law.

18. Please uphold truth and justice in the site of God.

19. I am asking that this case be moved back to Common Pleas Court. The place of its origin.

20. Emanuel's Encyclopedia of American Law-Volume 1 pages 102 and 103. *Removal of Cases to the Federal Courts*

G. *Pleadings not pierced*: The right of removal is generally decided from the face of the pleadings. The jurisdictional allegations of plaintiff's complaint control.

2. Plaintiff controls his claim: Plaintiff is master of his claim; if he chooses not to assert a federal claim, even though one is available to him, the defendant may not remove. Wr., 216

I know of no other remedy at law.

de fals judicio – A writ of false judgement; a writ to reverse an inferior Court's ruling. Black's Law Dictionary 7th Edition.

This is necessary as a writ to seek relief from Judge D. Brook Smith's ruling to dismiss the Pennsylvania State Police as a party to the suit.

His disregard of his own local Court rule W.D. PA. LR 17.1 § A. No action to which a minor is a party shall be compromised, settled, discontinued or *dismissed* except after approval by the Court pursuant to a petition presented by the guardian of the minor or the natural guard-

ian of the minor, such as the circumstances might require. My son is now 5 years old Joshua Nearhood – Plaintiff.

My son's and my civil rights were violated. Judge Smith's decision to dismiss the State Police as a party shows clear favorism. I lost faith in his impartiality to the case.

WRIT OF PROHIBITION

In pursuit of Writ of Prohibition the Plaintiff are requesting an order to forbid the U.S. District Court for the Western District of Pennsylvania to give a judgement in the case #01-339-J.

If this case is not returned to its place of origin, (Court of Common Pleas in Clearfield County, Pennsylvania) and is allowed to continue in this Federal District Court I will be forced to file a Writ of Course and a Writ of Assistance.

This United States District Court for the Western District of Pennsylvania has not responded to my objections stated in papers filed titled Notice of Dishonor – Change of Venue and Restoration of Honor to this Court. But did give its consent to its Local Rule 7.2 stipulations. Which states that I may make a stipulation without the approval of the Court. So I stated in the Notice to Restore Honor by way of W.D. PA. LR 7.2. If I am to be forced into this Court system (Federal Court), by Federal rule. These conditions must be met. See related materials and please review. In short it states that Pennsylvania is no longer a Commonwealth and the Courts can no longer act as though they are.

Also in the paper titled Protest – Ex Parte motion pursuant to W.D. PA. LR 7.1 § A.1 part 4. & 5. I asked the judge if and why he corrected the error in the defendants' order and by what authority gave him that right.

I believe this is improper and shows favorism to the defendants.

On October 12, 2001 I filed the original complaint.

On October 31, 2001 the defendants Todd Lombardo and Morris-Cooper Police department filed a Petition for Removal. A petition to remove *is not* an answer to a complaint.

Also in the Protest filed Nov. 13, 2001, I explained why the removal was not valid.

Also no reinstatement was filed by any of the Parties on Nov. 13, 2001. I also filed a Notice of Entry of Default Judgment and a Praecipe for Entry of Judgment of Default by Way of Protest because the Prothonotary, William A. Shaw, refused to file it.

At that point the case went to the judge for review. I asked for copies from the prothonotary the morning of the 14th of Nov. and was informed that it all went to the Judge. This secured its place of Origin. Only on appeal should it of been moved to the Federal District Court.

Also I received a Motion for an Enlargement of Time Certified it was done Oct. 31, 2001.

This has several errors which make it invalid. Including the attached order which Judge Smith rewrote correcting the Civil Division number. Causing me to lose faith in his impartiality.

The other parties represented by the Pennsylvania Attorney Generals office was way behind in all their doings. They also filed papers filled with errors. Making them invalid.

I am on my 3rd attempt at filing private criminal complaints on all the parties. This time attached to Writs of Mandamus to force Paul Cherry the District Attorney to do his duty.

To review these Writs of Mandamus they are filed in the Court of Common Pleas, Clearfield County, Pennsylvania. Civil Division No. 2002-1230-CD and No. 2002-1231-CD both dated Aug. 7, 2002.

WRIT OF ASSISTANCE

The definition is a writ to enforce a Court's decree transferring real property, the title of which has been previously adjudicated. This is from Black's Law Dictionary 7th Edition.

It can easily be construed that the Federal District Court of Western Pennsylvania has taken a decisive position in the transfer of authority over Pennsylvania. And Pennsylvania can no longer carry the title *Commonwealth.*

The relief sought is that the state of Pennsylvania stop claiming unlimited political autonomy in equitable matters and rewrite the state constitution giving all authority in equity to the Federal government dissolving the state Courts.

Again the definition from Black's Law Dictionary a writ issued as a matter of course or granted as a matter of right. – Also termed writ of right.

The right is mine. The Western District Court on their order of me to amend my complaint by filing a malicious or selective prosecution claim or the case will be dismissed in its entirety is in fact an order to move forward. This is an acceptance of the stipulation set forth in the restoration of honor to this Court. The Federal District Court is bound to stay its course. God Help Us. Relief sought if the Federal Courts have rule over me and the authority of the Court of Common Pleas so let it rule over all the state and the people so if this is true let it be advanced.

Relief sought is that the state of Pennsylvania and all state entities stop using the word Commonwealth in their titles and make the change known to the public to eliminate the deception of the definition of the word. The Federal Court has ruled. The Federal Courts no longer serve us by permission but now rule over us by command. This Western District Court must command the Pennsylvania representative remove all statement in the state constitution and else where that says Common Pleas Court have original and virtually unlimited jurisdiction in civil and equitable matters.

WRIT OF ADVANCE

In pursuit of W.D. PA. LR 7.2. The stipulation is bound by local court rule of the Western District of Pennsylvania. This Federal Court has ruled over me and now it has ruled over the Commonwealth. This yoke was hard for

me to carry now it is up to the whole state to carry. God Help Us.

WRIT OF REMAND

In pursuit of the constitution of the United States of America, Article 3, § 1 and § 2 that this United States Supreme Court has the jurisdictional power to extend to all cases, in law and in equity. Please return Case No. 01-339-J of the U.S. District Court of Western Pennsylvania formerly known as No. 01-1715-CD in the Court of Common Pleas, Clearfield, Pennsylvania to the place of its origin and where subject matter jurisdiction exists for final absolution.

Respectfully submitted,

DAVID NEARHOOD, PRO SE
R.R. 2, Box 160
Morrisdale, Pennsylvania 16858
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SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

WILLIAM K. SUTER
CLERK OF THE COURT

AREA CODE 202
479-3011

September 26, 2002

David Nearhood
R. R. 2
Box 160
Morrisdale, PA 16858
RE: David Nearhood

Dear Mr. Nearhood:

The above-entitled petition for an extraordinary writ of mandamus/prohibition was received on September 25, 2002. The papers are returned for the following reason(s):

> The petition does not show how the writ will be in aid of the court's appellate jurisdiction, what exceptional circumstances warrant the exercise of the Court's discretionary powers, and why adequate relief cannot be obtained in any other form or from any other court. Rule 20.1.
>
> You have not appended a copy of the judgment or order in respect of which the writ is sought. Rule 20.3 pertaining to petitions for writs of prohibition and mandamus.
>
> A copy of the rules of this Court are enclosed.

The petition fails to comply with the content and order of content requirements of Rule 14.

Three copies of the corrected petition must be served on opposing counsel. Rule 29.3.

Kindly correct the petition so that it complies in all respects with the Rules of the Court and return it to this office promptly so that it may be docketed.

This office shall retain one copy of the petition and your check in the amount of $300 in expectation of properly prepared petition.

Sincerely,
William K. Suter, Clerk
By: /s/ Ruth Jones
Ruth Jones
(202) 479-3022

Pertaining to

Rule 20.1 Supreme Court is "court of record" within section of Uniform Declaratory Judgements, Act providing that courts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations. State ex rel. *Schultz-Lindsay Const. Co. v. State Bd. of Equalization,* 403 P.2d 635, 647, 145 Mont. 380.

Did Judge use local case to dismiss defendant without regard, to local court rule. If Judge dismiss not using a case from local Court. Please (void) And are the cases cited by defendants of the local court if not they do not apply in this Court.

Enclosures

This U.S. District Court of Western Penn. through its local court rule W.D. PA. LR 7.2 gives the Plaintiffs in right to make one stipulation without the courts approval.

I am now asking this Supreme Court to make declaration that I have the right and status and a legal relationship to the demands that are set forth.

Supreme Court is court of record, where in acts and proceedings are enrolled for perpetual memorial, and such courts "speak only through their records." *Naro v. State,* 101 So. 666, 667, 212 Ala. 5.

It is this highest court in the land that, I request that, the acts and proceedings are enrolled for perpetual memorial so the course may be stayed for the advancement of it. And it is through the authority of this Supreme power I declare my right to assistance to all that is contended in this petition.

These are clearly exceptional circumstances that only the highest Court in our land with its 40 discretionary powers (Judges) are able to discern adequate relief.

If this case is allowed to continue in this Federal Western Pennsylvania U.S. District Court I will file a writ of course and a writ of assistance.

An Appeals Court (if appealed) cannot deny a previous Federal Court Rule. If this continues in the Federal Court this rule must be exercised and it cannot be denied this rule of stipulation is without need of the approval of the court. This Federal Court has taken its position.

Rule 20.3(a) Writ of Mandamus against D. Brook Smith, Chief Judge of the Western District Court of Penn. No other Court is authorized to exercise this writ. The documents essential to understanding this petition are entitled: Notice of Dishonor, Restoration of Honor.

This request for a Writ of Mandamus is to dismiss and disqualify Judge D. Brook Smith from this case #01-339-J which is before him. For improprieties.

Pursuant to Rule 21.4 this motion is in need of emergency action. The relief sought is to *maintain* the PA Constitution and the state as a Commonwealth. And the Court of Common Pleas as defined in the Penn Const. Pursuant to Rule 37.3. We the Plaintiff in this case are a party to this case and support this motion amicus curiae. This will support plaintiff party in its outcome and the Court of Common Pleas and the Commonwealth of Penn.

This motion is filed on our behalf as well as on behalf of the Court of Common Pleas and the Commonwealth of Penn.

Extraordinary Writ

Rule 20.3(a) Omnibus Motion

(1) Writ of prohibition – in that this Western Court of Pa be prohibited to act on or pass a final judgement on this case. It is a defacto court. Plaintiff is master of his case.

(2) Writ of Mandamus – in that the Judge be dismissed and/or disqualified from the case due to improprieties.

Rule 37 Brief for an Amicus Curiae (for the Commonwealth) David Nearhood, Pro Per authorized the brief in whole. The entity to which I serve is God Almighty his counsel is the TRUTH.[1]

---

[1] Rule 11. Certiorari to a United States Court before judgment. This case has not gone to the Appeals Court but I believe it is of such public import that this Court should not wait. This case if allow to continue will most likely cost the state of Penn. billions of dollars and mass confusion. This Western Court of Penn. has given applied consent to change the title and the course of the Commonwealth of Penn. Please review.

Amplify reason for allowance of writ. Rule 10(9) has departed from the accepted and usual course of judicial proceedings. In that the courts both state and federal are refusing to recognize the illegal papers filed and proper proceedure. This denies the plaintiffs again due process. These actions by the lower courts have brought the Plaintiffs to this Supreme Court to establish our rights to stay the course to the changing of the Constitution and rules of law or to correct the lower courts' errors and grant relief.

Dockets to be reviewed:

Docket No. 20, dated August 20, 2002, Morris-Cooper and Lombardo's motion to dismiss.

Docket No. 21, dated September 20, 2002, Granville's motion to dismiss.

Docket No. 11, dated December 21, 2001, change of venue which was refiled as a miscellaneous motion on November 14, 2002 as docket No. 24.

Docket No. 26, dated November 14, 2002, response to defendants response.

Defendants' Motion for Enlargement of time 2, 3 order by Judge 4 Nov. 8 5 Memorandum and Order 12 opinion and order 15 opinion and order 17 order and more.

Rule 14 Writ of certiorari – this case is pending in the U.S. District Court of Western Pennsylvania. That court is unable to discern what has been legally entered for review and what has been illegally entered making it void. The discretionary powers show favorism to the defending party. That court is failing to secure the just, speedy, and inexpensive determination of the applicable action. Pa. R.C.P. No. 231 Rule 126 *Business of Courts.*

It is of such imperative public importance that this Supreme Court take hold of this case, that is sure to have a great impact on the citizens of Pennsylvania and the Commonwealths of this nation to follow. The damages the Plaintiffs orginally claimed have risen to damage the Commonwealth by rulings in the defendants favor to move, making them the masters of the Plaintiffs case.

(iv) 28 U.S.C. § 2101(e)

Rule 14d official and unofficial opinions and orders entered by court or administrative agencies.

(1.) Order – Nov. 6, 2001 Defendant's Motion for Enlargement of Time, Granted in part. dkt. No. 2

(2.) Memorandum and order – Nov. 19, 2001 Defendant Granville's Motion for enlargement of Time, dkt. No. 4, Granted in part.

(3.) Schedule for disposition of motions, Dec. 4, 2001 chamber of Chief Judge D. Brooks smith.

(4.) Memorandum Opinion and Order, Jan. 4, 2002 Plaintiffs' Motion for Change of Venue, dkt. No. 11, denied.

(5.) (A) Memorandum Opinion and order, July 16, 2002 defendants' Motion to dismiss, granted in part, denied in Part, dkt. Nos. 6, 8.

(B) further order and directed

1.) Pennsylvania state police terminated as a party.

2.) Plaintiff to file an amended complaint.

3.) Shall be filed by July 31, 2002 and shall specifically detail:

4.) If plaintiff fail to file amended complaint specifically detailing a count of selective or malicious prosecution by July 31, 2001 it shall be dismissed in its entirety.

5.) Order – noting plaintiffs "Response to Judge's Order and "Specific Details", dkt. No. 16, Aug. 1, 2002.

This Order was written by Judge D. Brooks Smith and the U.S. District Court for the Western District of Pennsylvania, Correcting the civil action No. And granting the Defendant's Motion for Enlargement of time in part. It should have been made void. And denied in full. Due to fraud. This order responds to both Petitions.

MEMORANDUM AND ORDER NOV. 19, 2001. Defendant Thomas Granville seems to believe he was included in the other defendants requests, removal and extention of time. But he ask for more time. Again granted in part from the coattails of an invalid request and order.

MEMORANDUM OPINION AND ORDER JANUARY 4, 2002. Judge Smith never mentions the change of venue is also a notice of dishonor. Or all the errors and crimes I pointed out. Judge Smith lists all violations and tries to justify the defendants vague language as specific. The letter states "Plaintiffs do not dispute this interpretation. Therefore this court has subject matter jurisdiction over the action. This is a lie. This is fraud. Dec. 21, 2001, I made it very clear I did not agree. See Notice of Dishonor in caption and titled change of venue. And protest – Ex Parte Motion Pursuant to W.D. PA. LR. 7.1 and A.1. That is clearly a specific objection to the court.

Also Judge Smith states that a motion to remand "on the basis of any defect other than lack of subject matter

jurisdiction must be made within 30 days after the filing of the notice of removal." 28 U.S.C. § 1447.

Please take notice of docket 21 and 22 filed September 20 and September 30. The defendants move for dismissal on grounds of lack of subject matter.

Case is given over to Judge David Stewart Cercone, United States District Judge. His order on October 23, 2002 shows him leaning in favor of the defendant dismissal for lack of subject matter. Nearly one year before Judge D. Brooks Smith would not consider a remand on lack of subject matter.

On July 16, 2002 Judge Smith orders Plaintiffs to make a malicious prosecution claim which the Plaintiffs cannot maintain until after the criminal hearing against Lora and Dillen Leigey for obstruction of justice, conspiracy to perjury and tampering with witnesses, pending on private complaint. Judge Smith knowing the laws knows a malicious prosecution claim requires a rehearing and cannot be maintained in U.S. District Court for lack of jurisdiction nor heard there. But gives validity to the defendants motion to dismiss only. It is stated that a motion for remand can only happen by statute, which there are no federal statutes to support a remand from federal to state where subject matter exists.

I believe the judge knows the laws. Knowing he cannot rehear the case. Knowing I cannot have it remanded to the state court by statute. The only course is dismissal. Please help.

At my appeal in the court of Common Pleas, Clearfield County Dillen Leigey admitted on the witness stand that his mother was coaching him from the back. I and my son

heard her. My son Jeremy saw her and I am sure others did also. I believe I will be cleared of charges. The District attorney is taking a very long time to schedule.

I did not see any reason to respond to invalid papers filed. I did not know the court accepts papers filed full of errors. I thought Judges controlled the courts and did not allow crimes to be committed within them. I'm finding that it is very commonly permitted. I could not get mine filed with the Prothonotary or the clerk. I guess it's different fo· the licensed professionals.

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN
DISTRICT OF PENNSYLVANIA**

DAVID NEARHOOD and JOSHUA NEARHOOD, Plaintiffs,	)	
v.	)	Civil Action No. 01-339-J
OFFICER TODD LOMBARDO, THE MORRIS-COOPER POLICE, TROOPER THOMAS GRANVILLE and THE PENNSYLVANIA STATE POLICE, Defendants.	)	

MEMORANDUM OPINION AND ORDER

On October 31, 2001, defendants filed a timely notice of removal under 28 U.S.C. §1441 based on federal question jurisdiction. Dkt. no. 1 Defendants then filed motions to dismiss for failure to state a claim under Fed. R. Civ. P. 12(b)(6). Dkt. nos. 6, 8. Plaintiffs, who are proceeding *pro se*, were informed that their responses to defendants' motions to dismiss were due on December 28, 2001. Dkt. no. 10. As of January 2, 2002, the only motion filed by plaintiffs was entitled "change of venue." Dkt. no. 11.

It is unclear whether plaintiffs intend their "change of venue" motion to be responsive to defendants' motions to dismiss. Because the change of venue motion contains a request that this court return the case to the Clearfield County Court of Common Pleas, I will assume that it is intended to serve as a motion to remand and not as a response to defendants' motions.

A motion to remand "on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal." 28 U.S.C. § 1447. Plaintiffs do not assert any basis for their motion to remand, but even if they did assert a procedural defect their motion would be untimely since it was not filed until December 12, 2001. Thus, remand is only appropriate in this case if this court lacks subject matter jurisdiction.

Plaintiffs' complaint requests damages "for the violation of our civil rights: Under Color of Law, Due Process, Petition for Redress of Grievance, Discrimination. Also for Negligence, Conspiracy to Deprive and Conspiracy to Insure a Conviction." Dkt. no. 1. Defendants interpreted this language as asserting a violation of the right to due process guaranteed by the U.S. Constitution, and violations of the Civil Rights ACT, 42 U.S.C. § 1983 and § 1985. Plaintiffs do not dispute this interpretation, therefore this court has subject matter jurisdiction over the action. *See* 28 U.S.C. § 1331 and § 1343.

Accordingly, it is hereby ORDERED on this 4th day of January 2002 that Plaintiffs' Motion for Change of Venue, dkt. no. 11, is DENIED. It is further ORDERED and DIRECTED that plaintiffs shall be given an additional week, until January 11, 2002, to file their responses to defendants' motions to dismiss.

BY THE COURT:

/s/ D. Brooks Smith
D. Brooks Smith
Chief United States
District Judge

cc: all counsel of record

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN
DISTRICT OF PENNSYLVANIA**

DAVID NEARHOOD and JOSHUA NEARHOOD,	)	
Plaintiffs,	)	
v.	)	Civil Action No. 01-339J
OFFICER TODD LOMBARDO, THE MORRIS-COOPER POLICE DEPARTMENT, TROOPER THOMAS GRANVILLE and THE PENNSYLVANIA STATE POLICE,	)	
Defendants.	)	

ORDER OF THE COURT

AND NOW, this 23rd day of October, 2002, defendants having filed motions to dismiss plaintiff's amended complaint (Doc. #19 & 21) and briefs in support (Doc. #20 & 22), it is ORDERED that *pro se* plaintiffs may file a response in opposition to the motions on or before November 15, 2002. Plaintiffs shall limit their response in opposition to the grounds advanced by defendants to dismiss plaintiff's only remaining cause of action – a malicious prosecution claim under 42 U.S.C. § 1983. **The failure to submit a response in opposition to defendants' motions to dismiss in a timely manner will result in the dismissal of this action for the reasons stated in**

the motion and for failure to prosecute the action in a timely manner.

/s/ DS Cercone
David Stewart Cercone
United States District Judge

cc: Thomas G. Eddy
Deputy Attorney General
Office of the Attorney General
5th Floor, Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219

David Nearhood
R.R. 2, Box 160
Morrisdale, PA 16858

Paul D. Krepps, Esq.
600 Grant Street
USSteel Tower
Suite 2900
Pittsburgh, PA 15219

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN
DISTRICT OF PENNSYLVANIA**

DAVID NEARHOOD and JOSHUA NEARHOOD, Plaintiffs,	)
v.	) Civil Action No. 01-339-J
OFFICER TODD LOMBARDO, THE MORRIS-COOPER POLICE, TROOPER THOMAS GRANVILLE and THE PENNSYLVANIA STATE POLICE, Defendants.	)

MEMORANDUM and ORDER

On November 13, 2001, defendant Thomas Granville filed a motion to enlarge time to file a response until December 12, 2001. Dkt. no. 4. The request was framed as a 30-day extension of time, because Granville believed that defendants Todd Lombardo and the Morris-Cooper Police were only granted until November 12, 2001 to respond to plaintiff's complaint after they removed the action to federal court. *See* dkt. no. 4, ¶ 4-5.[1] In actuality, Lombardo and the Morris-Cooper Police were given until November

[1] In calculating the 30-day extension, Granville appears to be assuming that he is automatically entitled to the same extensions granted to the other defendants. However, elsewhere in his motion he suggests that his response is not due until November 16 based on the November 1 filing of the Notice of Removal. *See* dkt. no. 4, ¶ 6.

28, 2001 to respond to plaintiff's complaint. *See* dkt. no. 3. This additional time should also be sufficient for defendant Granville to prepare his answer to plaintiff's complaint.[2]

Accordingly, it is hereby ORDERED on this 19th day of November 2001 that Defendant Granville's Motion for Enlargement of Time, dkt. no. 4, is GRANTED IN PART. Defendant Granville shall file his Motion in response to the Complaint on or before November 28, 2001.

BY THE COURT:

/s/ D. Brooks Smith
D. Brooks Smith
Chief United States
District Judge

cc: all counsel of record

[2] Granville argues that he will be prejudiced by the removal if he is not given an extension of time through December 12, but such prejudice is not apparent since Federal Rule of Civil Procedure 8 does not require a more rigorous answer than would be required under Pennsylvania Rule of Civil Procedure 206.2.

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN
DISTRICT OF PENNSYLVANIA**

DAVID NEARHOOD and JOSHUA NEARHOOD,	)	
Plaintiffs,	)	
v.	)	Civil Action No. 01-339-J
OFFICER TODD LOMBARDO, THE MORRIS-COOPER POLICE, TROOPER THOMAS GRANVILLE and THE PENNSYLVANIA STATE POLICE,	)	
Defendants.	)	

ORDER

On November 1, 2001, defendants Todd Lombardo and the Morris-Cooper Police Department removed this action and requested a 90 day extension of time to file a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6).[1] Dkts. no. 1, 2. Defense counsel claimed that he needs such time to interview the defendants and gather police incident reports, affidavits and other documents, so that the Rule 12(b)(6) motion may be treated by the court as a Rule 56 motion for summary judgment. Dkt. no. 2, ¶¶ 8, 10.

[1] Ordinarily, the defendants' answer or motion would have been due on that day, since the complaint was filed October 12, 2001, but they are afforded an additional 5 days, until November 8, based on the removal. *See* Fed. R. Civ. Pro. 81(c).

However, if the facts surrounding the claim are so clearly inadequate as to support a Rule 12(b)(6) motion to dismiss, defendants should not need that much time to prepare.

Accordingly, it is hereby ORDERED on this 6th day of November 2001 that Defendant's Motion for Enlargement of Time, dkt. no. 2, is GRANTED in part, through a 20-day extension. Defendants shall file their Motion in response to the Complaint on or before November 28, 2001.

BY THE COURT:

/s/ D. Brooks Smith
D. Brooks Smith
Chief United States
District Judge

cc: all counsel of record

The issue that is the point of law is if I have standing to issue this writ of mandamus. I have clearly showed that I do. Mr. Cherry has a duty to prosecute and is refusing to do it. It is clear that the defendants intended to write what they wrote as indicated by the Certificate of Service. It is clearly not true nor correct.

It is the duty of this court to issue this order to command this public officer to do his duty that he has been actively acting as a defense attorney which is contrary to his title as, prosecuting attorney.

46 Am Jur 2d 46 Am Jur 2d § 20 Violation of Procedural Rules. I believe is related in the case Sache v Gillette, 101 Minn 169, 112 NW 386. The procedural rules violated in my case are as explained in the above.

Furthermore this negligence and the continued denial of due process is an outrage. This will not stand. Take the appropriate actions immediately. GOD SAVE THE HONOR OF THIS COURT.

David Lee Nearhood

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

DAVID NEARHOOD and JOSHUA NEARHOOD,	)	
Plaintiffs,	)	
v.	)	Civil Action No. 01-339-J
OFFICER TODD LOMBARDO, THE MORRIS-COOPER POLICE, TROOPER THOMAS GRANVILLE and THE PENNSYLVANIA STATE POLICE,	)	
Defendants.	)	

MEMORANDUM and ORDER

On November 13, 2001, defendant Thomas Granville filed a motion to enlarge time to file a response until December 12, 2001. Dkt. No. 4. The request was framed as a 30-day extension of time, because Granville believed that defendants Todd Lombardo and the Morris-Cooper Police were only granted until November 12, 2001 to respond to plaintiff's complaint after they removed the action to federal court. *See* dkt. no. 4, ¶ 4-5.[1] In actuality, Lombardo and the Morris-Cooper Police were given until November

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28, 2001 to respond to plaintiff's complaint. *See* dkt. no. 3. This additional time should also be sufficient for defendant Granville to prepare his answer to plaintiff's complaint.[2]

Accordingly, it is hereby ORDERED on this 19th day of November 2001 that Defendant Granville's Motion for Enlargement of Time, dkt. no. 4, is GRANTED IN PART. Defendant Granville shall file his motion in response to the Complaint on or before November 28, 2001.

BY THE COURT:

/s/ D. Brooks Smith
D. Brooks Smith
Chief United States
District Judge

cc: all counsel of record

[This order was granted in connection with the invalid order that the court corrected.

On October 19, 2001 I attempted to file a Praecipe to reinstate Complaint in the Court of Common Pleas, Clearfield County, Pennsylvania but the Prothonotary refused it. See Exhibit B in Notice of Dishonor, Change of Venue in U.S. District Court of Western Pennsylvania. I was told I had to let the date open.]

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[2] Granville argues that he will be prejudiced by the removal if he is not given an extension of time through December 12, but such prejudice is not apparent since Federal Rule of Civil Procedure 8 does not require a more rigorous answer than would be required under Pennsylvania Rule of Civil Procedure 206.2.

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

DAVID NEARHOOD and JOSHUA NEARHOOD, Plaintiffs, vs. OFFICER TODD LOMBARDO, THE MORRIS-COOPER POLICE DEPARTMENT, TROOPER THOMAS GRANVILLE, and THE PENNSYLVANIA STATE POLICE, Defendants.	Civil Division No. 01-1715CD

ORDER OF COURT

AND NOW, to wit this _____ day of _____, 2001, upon consideration of Defendants' Motion for Enlargement of Time, it is hereby ORDERED, ADJUDGED and DECREED that said Motion filed on behalf of Defendants, Todd Lombardo and the Morris-Cooper Police Department is GRANTED. Defendants shall file their appropriate Motion in response to the Complaint on or before _____, 2001.

BY THE COURT

_____J.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **DEFENDANTS' MOTION FOR ENLARGEMENT OF TIME** was served upon all parties listed below, by first

class United States mail, postage prepaid, this 31 day of Oct, 2001, addressed as follows:

David Nearhood
R.R. 32, Box 160
Morrisdale, PA 16858
(pro se Plaintiff)

MARSHALL, DENNEHEY,
WARNER COLEMAN & GOGGIN
/s/ Paul D. Krepps
Paul D. Krepps, Esquire

[The Civil Division No. 01-1715CD is not true nor correct. The correct Number is 01-339-J]

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

DAVID NEARHOOD and JOSHUA NEARHOOD,	)	
Plaintiffs,	)	Civil Action No. 01-339-J
v.	)	
OFFICER TODD LOMBARDO, THE MORRIS-COOPER POLICE, TROOPER THOMAS GRANVILLE and THE PENNSYLVANIA STATE POLICE,	)	
Defendants.	)	

ORDER

On November 1, 2001, defendants Todd Lombardo and the Morris-Cooper Police Department removed this action and requested a 90 day extension of time to file a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6).[1] Dkts. no. 1, 2. Defense counsel claimed that he needs such time to interview the defendants and gather police incident reports, affidavits and other documents, so that the Rule 12(b)(6) motion may be treated by the court as a Rule 56 motion for summary judgment. Dkt. no. 2, ¶¶ 8, 10. However, if the facts surrounding the claim are so clearly

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inadequate as to support a Rule 12(b)(6) motion to dismiss, defendants should not need that much time to prepare.

Accordingly, it is hereby ORDERED on this 6th day of November 2001 that Defendant's Motion for Enlargement of Time, dkt. no. 2, is GRANTED in part, through a 20-day extension. Defendants shall file their Motion in Response to the Complaint on or before November 28, 2001.

BY THE COURT:

/s/ D. Brooks Smith
D. Brooks Smith
Chief United States
District Judge

cc: all counsel of record

[This is the Order wrote in the above court. By the court. Notice the civil Action No. 01-339-J is different from the one wrote by the defendants for signature. The Judge or court correcting the attorney or defendants error. This shows favorism and impropriety. The defendants order was *not valid*.

The court had no right to correct the error that was certified to be true and correct by the professional lawyer.]

The defendants and their attorneys lied and cheated their way through this case. I have filed private criminal complaints aganst them with the prosecuting attorney at Clearfield, Pennsylvania.